



**DEPARTMENT OF JUSTICE**  
**Drug Enforcement Administration**

**Tel-Pharmacy; Decision and Order**

On August 3, 2017, the then Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Tel-Pharmacy (hereinafter, Applicant) of Coconut Creek, Florida. OSC, at 1. The OSC proposed the denial of Applicant's application for DEA Certificate of Registration No. W16006664A. It alleged that Applicant "does not have authority to operate a pharmacy in Florida, the state for which it seeks a [DEA registration]." *Id.* (citing 21 U.S.C. 823(f)). Specifically, the OSC alleged that Applicant's Florida pharmacy permit expired on February 28, 2017, and was not renewed. *Id.* at 2.

The OSC notified Applicant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Applicant of the opportunity to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated December 6, 2021, a Diversion Investigator (hereinafter, the DI) assigned to the DEA's Miami Field Division stated that on August 4, 2017, a Special Agent and Task Force Officer from DEA's Miami Field Division hand-delivered a copy of the OSC to Applicant's agent at the agent's residence. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 1, at 1-2; *see also* RFAAX 1, Appendix (hereinafter, App.) B.

The Government forwarded its RFAA, along with the evidentiary record, to this office on December 8, 2021. In its RFAA, the Government represents that "neither [Applicant] nor any attorney representing [Applicant] has requested a hearing" nor "has [Applicant] nor any attorney

for [Applicant] submitted a written statement.” RFAA, at 2. The Government “seeks to deny [Applicant’s] application for a [DEA registration] because [Applicant] lacks authority to handle controlled substances in [Florida], the state in which it seeks registration with DEA.” *Id.* at 1. Accordingly, the Government requests that the Administrator deny Applicant’s application. *Id.* at 5.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Applicant on August 4, 2017. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Applicant, nor anyone purporting to represent the Applicant, requested a hearing, submitted a written statement while waiving Applicant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Applicant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

## **FINDINGS OF FACT**

### **Applicant’s Application for DEA Registration**

On or about January 27, 2016, Applicant submitted an application for a DEA Certificate of Registration as a retail pharmacy in Schedules II through V with a proposed registered address at 5489 Wiles Rd 302, Coconut Creek, FL 33073. RFAAX 1, App. A, at 1. Applicant’s application was assigned Control No. W16006664A.<sup>1</sup> *Id.*

### **The Status of Applicant’s State License**

In her Declaration, the DI stated that as of December 6, 2021, Applicant’s state license was listed as “null and void” on the Florida Department of Health website. RFAAX 1, at 2; *see*

---

<sup>1</sup> In spite of Applicant’s discontinuance of business, its application remains pending and I will continue to assess the application under 21 U.S.C. 823. *See Lawrence E. Stewart, M.D.*, 86 FR 15,257 (2021).

also RFAAX 1, App. C. According to the Florida Department of Health’s online records, of which I take official notice, Applicant’s state pharmacy registration PH29813 is “null and void.”<sup>2</sup> Florida Department of Health’s License Verification, <https://mqa-internet.doh.state.fl.us/MQASearchServices/Home> (last visited date of signature of this Order).

Accordingly, I find that Applicant is not currently licensed to engage in the practice of pharmacy in Florida, the state in which Applicant applied for registration with the DEA.

## DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had [its] State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a pharmacy . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C.

---

<sup>2</sup> Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Applicant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

§ 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR 27,617.

According to Florida statute, “It is unlawful for any person to own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a pharmacy: (a) which is not registered under the provisions of this chapter.” Fla. Stat. Ann. 465.015(1). Further, “the practice of the profession of pharmacy” definition “includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug<sup>3</sup> . . . .” Fla. Stat. Ann. 465.003(13) (West, 2021).

Here, the undisputed evidence in the record is that Applicant currently lacks authority to operate a pharmacy in Florida. As already discussed, a pharmacy must be a licensed to dispense a medicinal drug, including a controlled substance, in Florida. Thus, because Applicant lacks authority to practice pharmacy in Florida and, therefore, is not authorized to dispense controlled substances in Florida, Applicant is not eligible to receive a DEA registration. Accordingly, I will order that Applicant’s application for a DEA registration be denied.

---

<sup>3</sup> “Medicinal Drugs” or “Drugs” means “those substances or preparations commonly known as ‘prescription’ or ‘legend’ drugs which are required by federal or state law to be dispensed only on a prescription . . . .” Fla. Stat. Ann. 465.003(8).

## **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby order that the pending application for a Certificate of Registration, Control Number W16006664A, submitted by Tel-Pharmacy, is denied, as well as any other pending application of Tel-Pharmacy for additional registration in Florida. This Order is effective [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**Anne Milgram,**  
*Administrator.*

[FR Doc. 2022-00956 Filed: 1/18/2022 8:45 am; Publication Date: 1/19/2022]